

**Mt. Carmel Medical Center and National Health
Care Union NAGE/SEIU AFL-CIO, Petitioner.**
Case 17-RC-10639

March 31, 1992

**DECISION AND DIRECTION OF SECOND
ELECTION**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 11, 1991, and the attached hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 77 for and 185 against the Petitioner, with 25 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations,² and finds that the election must be set aside and a new election held.

¹The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule

[Direction of Second Election omitted from publication.]

a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the hearing officer's findings.

²In adopting the recommendation to direct a second election, we do not rely on the hearing officer's discussion of whether the Petitioner had sufficient time to refute the assertions in the forged document prepared and disseminated by the Employer. Rather, we find that the Employer's use of a forged document created the condition the Board cautioned against in *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982), and that even if the Petitioner had managed to disseminate its LM-2 to employees prior to the election, voters would not have been readily able to discern which document was forged.

Contrary to the Employer's assertion that few employees saw the document in question, we note that uncontradicted testimony supports a finding that the forgery not only had been distributed to managers, but had been posted by the Employer's basement timeclock, on the bulletin board of its fourth floor medical department, and on restroom doors. Thus the hearing officer was justified in drawing an inference that the forged document was widely disseminated and therefore could have affected the election outcome.

Member Oviatt agrees with his colleagues that the use of a forged document mandates that the election be set aside. He considers it unnecessary to consider the other aspects of the rule announced in *Midland*, supra.